

**U.S. District Court  
Western District of Missouri (Kansas City)  
CIVIL DOCKET FOR CASE #: 4:14-cv-00815-BCW  
*Internal Use Only***

Federal Trade Commission v. BF Labs, Inc. et al  
Assigned to: District Judge Brian C. Wimes  
Cause: 15:0053 Federal Trade Commission Act

Date Filed: 09/15/2014  
Jury Demand: None  
Nature of Suit: 890 Other Statutory  
Actions  
Jurisdiction: U.S. Government Plaintiff

**Plaintiff**

**Federal Trade Commission**

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V.

**Receiver**

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V.

**Defendant**

**BF Labs, Inc.**

*a Wyoming corporation*

*doing business as*

Butterfly Labs

represented by **Braden M. Perry**

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**Defendant**

**Darla Drake**  
*an individual*

represented by **Braden M. Perry**  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Bar Status: Active*

**James M. Humphrey**  
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**LEAD ATTORNEY**  
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**Michael S. Foster**  
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**ATTORNEY TO BE NOTICED**  
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**Miriam Bailey**  
(See above for address)  
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**Defendant**

**Nasser Ghoseiri**  
*an individual*

**Defendant**

**Sonny Vleisides**  
*an individual*

represented by **James M. Humphrey**  
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**Braden M. Perry**  
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**Michael S. Foster**  
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**Miriam Bailey**  
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**Intervenor**

**Kyle Alexander**

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**Intervenor**

**Dylan Symington**

represented by **Aristotle N. Rodopoulos**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Bar Status: Active*

**Noah K. Wood**  
(See above for address)  
**LEAD ATTORNEY**  
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*Bar Status: Active*

Email All Attorneys  
Email All Attorneys and Additional Recipients

Date Filed	#	Page	Docket Text
09/15/2014	<u>2</u>		COMPLAINT against All Defendants filed by Helen Wong on behalf of Federal Trade Commission. Filing fee waived. (Attachments: # <u>1</u> Civil Cover Sheet)(Jones, Robin) (Entered: 09/17/2014)
09/17/2014	<u>4</u>		MOTION for leave to file excess pages filed by Helen Wong on behalf of Federal Trade Commission. Suggestions in opposition/response due by

Oct 6 2014 p 5

		10/6/2014 unless otherwise directed by the court. (Wong, Helen) (Entered: 09/17/2014)
09/17/2014	<u>5</u>	CERTIFICATE of counsel <i>Pursuant to Rule 65</i> by Helen Wong on behalf of Federal Trade Commission (Wong, Helen) (Entered: 09/17/2014)
09/17/2014	<u>6</u>	NOTICE of filing <i>Plaintiff's Suggestion of Temp Receiver</i> by Federal Trade Commission (Attachments: # <u>1</u> Exhibit CV)(Wong, Helen) (Entered: 09/17/2014)
09/17/2014		SUMMONS ISSUED as to BF Labs, Inc., Darla Drake, Nasser Ghoseiri, Sonny Vleisides. (Martin, Jan) (Entered: 09/17/2014)
09/19/2014	10	ORDER granting <u>4</u> motion for leave to file excess pages. Signed on 9/19/14 by District Judge Brian C. Wimes. <b>This is a TEXT ONLY ENTRY. No document is attached.</b> (Baldwin, Joella) (Entered: 09/19/2014)
09/22/2014	<u>11</u>	NOTICE of appearance by Kersten Holzhueter on behalf of Eric L. Johnson (Attorney Kersten Holzhueter added to party Eric L. Johnson(pty:rc))(Holzhueter, Kersten) (Entered: 09/22/2014)
09/22/2014	<u>12</u>	NOTICE of appearance by Bryant T. Lamer on behalf of Eric L. Johnson (Attorney Bryant T. Lamer added to party Eric L. Johnson(pty:rc))(Lamer, Bryant) (Entered: 09/22/2014)
09/22/2014	<u>13</u>	NOTICE of appearance by Katie Jo New Wheeler on behalf of Eric L. Johnson (Attorney Katie Jo New Wheeler added to party Eric L. Johnson(pty:rc))(Wheeler, Katie Jo) (Entered: 09/22/2014)
09/22/2014	<u>14</u>	SUGGESTIONS in opposition to motion <i>Filed by FTC</i> filed by James M. Humphrey on behalf of Defendant BF Labs, Inc.. Reply suggestions due by 10/9/2014 unless otherwise directed by the court (Attorney James M. Humphrey added to party BF Labs, Inc.(pty:dft))(Humphrey, James) Modified on 9/24/2014 to correct docket text event(Wheeler, LaTandra). (Entered: 09/23/2014)
09/23/2014	<u>15</u>	MOTION for hearing <i>/to Present Live Testimony</i> filed by James M. Humphrey on behalf of BF Labs, Inc.. Suggestions in opposition/response due by 10/10/2014 unless otherwise directed by the court. (Humphrey, James) (Entered: 09/23/2014)
09/23/2014	<u>16</u>	NOTICE of appearance by James M. Humphrey on behalf of BF Labs, Inc. (Humphrey, James) (Entered: 09/23/2014)
09/23/2014	<u>17</u>	DISCLOSURE OF CORPORATE INTERESTS filed by James M. Humphrey on behalf of Defendant BF Labs, Inc..(Humphrey, James) (Entered: 09/23/2014)
09/23/2014	<u>18</u>	NOTICE of appearance by Miriam Bailey on behalf of BF Labs, Inc. (Attorney Miriam Bailey added to party BF Labs, Inc.(pty:dft))(Bailey, Miriam) (Entered: 09/23/2014)
09/23/2014	<u>19</u>	NOTICE of appearance by Braden M. Perry on behalf of BF Labs, Inc. (Attorney Braden M. Perry added to party BF Labs, Inc.(pty:dft))(Perry, Braden) (Entered: 09/23/2014)
09/23/2014	<u>20</u>	

		NOTICE of appearance by Michael S. Foster on behalf of BF Labs, Inc. (Attorney Michael S. Foster added to party BF Labs, Inc.(pty:dft))(Foster, Michael) (Entered: 09/23/2014)
09/23/2014	<u>21</u>	NOTICE of appearance by Andrea M Chase on behalf of Eric L. Johnson (Attorney Andrea M Chase added to party Eric L. Johnson(pty:rc))(Chase, Andrea) (Entered: 09/23/2014)
09/23/2014	22	NOTICE OF HEARING – <b>This is the official notice for this hearing.</b> Show Cause Hearing set for 9/29/2014 at 9:00 AM in Courtroom 7D, Kansas City (BCW) before District Judge Brian C. Wimes. (Baldwin, Joella) (Entered: 09/23/2014)
09/23/2014	<u>23</u>	MOTION for release of funds <i>from Frozen Assets (Stipulated)</i> filed by Bryant T. Lamer on behalf of Eric L. Johnson. Suggestions in opposition/response due by 10/10/2014 unless otherwise directed by the court. (Lamer, Bryant) (Entered: 09/23/2014)
09/23/2014	<u>24</u>	MOTION for hearing <i>/to present live testimony</i> filed by Leah Frazier on behalf of Federal Trade Commission. Suggestions in opposition/response due by 10/10/2014 unless otherwise directed by the court. (Frazier, Leah) (Entered: 09/23/2014)
09/24/2014	<u>25</u>	ORDER granting <u>23</u> motion for release of funds. Signed on 9/24/14 by District Judge Brian C. Wimes. (Baldwin, Joella) (Entered: 09/24/2014)
09/24/2014	<u>26</u>	ORDER granting <u>24</u> the FTC's Motion to Present Live Testimony at Preliminary Injunction Hearing. Signed on 9/24/14 by District Judge Brian C. Wimes. (Baldwin, Joella) (Entered: 09/24/2014)
09/24/2014	<u>27</u>	ORDER granting <u>15</u> motion for hearing. Signed on 9/24/14 by District Judge Brian C. Wimes. (Baldwin, Joella) (Entered: 09/24/2014)
09/24/2014	<u>28</u>	NOTICE of filing <i>Rule 45 Subpoena Requesting The Production of Documents and Other Tangible Things</i> by BF Labs, Inc. (Attachments: # <u>1</u> Exhibit 1)(Foster, Michael) (Entered: 09/24/2014)
09/24/2014	<u>29</u>	NOTICE of appearance by Teresa N. Kosmidis on behalf of Federal Trade Commission (Kosmidis, Teresa) (Entered: 09/24/2014)
09/24/2014	<u>30</u>	NOTICE of appearance by James M. Humphrey on behalf of Sonny Vleisides (Attorney James M. Humphrey added to party Sonny Vleisides(pty:dft))(Humphrey, James) (Entered: 09/24/2014)
09/24/2014	<u>31</u>	NOTICE of appearance by James M. Humphrey on behalf of Darla Drake (Attorney James M. Humphrey added to party Darla Drake(pty:dft))(Humphrey, James) (Entered: 09/24/2014)
09/24/2014	<u>32</u>	NOTICE of appearance by Miriam Bailey on behalf of Sonny Vleisides (Attorney Miriam Bailey added to party Sonny Vleisides(pty:dft))(Bailey, Miriam) (Entered: 09/24/2014)
09/24/2014	<u>33</u>	NOTICE of appearance by Miriam Bailey on behalf of Darla Drake (Attorney Miriam Bailey added to party Darla Drake(pty:dft))(Bailey, Miriam) (Entered: 09/24/2014)
09/24/2014	<u>34</u>	

		NOTICE of appearance by Michael S. Foster on behalf of Sonny Vleisides (Attorney Michael S. Foster added to party Sonny Vleisides(pty:dft))(Foster, Michael) (Entered: 09/24/2014)
09/24/2014	<u>35</u>	NOTICE of appearance by Michael S. Foster on behalf of Darla Drake (Attorney Michael S. Foster added to party Darla Drake(pty:dft))(Foster, Michael) (Entered: 09/24/2014)
09/24/2014	<u>36</u>	NOTICE of appearance by Braden M. Perry on behalf of Darla Drake (Attorney Braden M. Perry added to party Darla Drake(pty:dft))(Perry, Braden) (Entered: 09/24/2014)
09/24/2014	<u>37</u>	NOTICE of appearance by Braden M. Perry on behalf of Sonny Vleisides (Attorney Braden M. Perry added to party Sonny Vleisides(pty:dft))(Perry, Braden) (Entered: 09/24/2014)
09/25/2014	38	NOTICE OF HEARING – <b>This is the official notice for this hearing.</b> Discovery Dispute Teleconference set for 9/25/2014 at 11:30 a.m., before District Judge Brian C. Wimes. Parties have been provided conference call-in numbers via e-mail.(Baldwin, Joella) (Entered: 09/25/2014)
09/25/2014	39	Minute Entry. Proceedings held before District Judge Brian C. Wimes: DISCOVERY Teleconference held on 9/25/2014. Court grants Plaintiff's oral motion to seal Doc. # 28 and finds as moot Plaintiff's oral motion to quash and strike same. To order a transcript of this hearing please contact Denise Halasey, 816-512-5657. (Baldwin, Joella) Modified on 9/25/2014 (Baldwin, Joella). (Entered: 09/25/2014)
09/25/2014	<u>40</u>	Receiver BOND in the amount of \$ \$15,000.00 posted by Eric L. Johnson (The Ohio Casualty Insurance Company. Original Bond papers are being maintained in the Clerk's Office. (Martin, Jan) (Entered: 09/25/2014)
09/26/2014	<u>41</u>	MOTION for leave to file excess pages filed by Helen Wong on behalf of Federal Trade Commission. Suggestions in opposition/response due by 10/14/2014 unless otherwise directed by the court. (Wong, Helen) (Entered: 09/26/2014)
09/27/2014	<u>42</u>	REPLY SUGGESTIONS to motion re <u>14</u> <i>Reply in Support of PI</i> filed by Helen Wong on behalf of Plaintiff Federal Trade Commission. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit, # <u>13</u> Exhibit, # <u>14</u> Exhibit, # <u>15</u> Exhibit, # <u>16</u> Exhibit, # <u>17</u> Exhibit, # <u>18</u> Exhibit, # <u>19</u> Exhibit, # <u>20</u> Exhibit, # <u>21</u> Exhibit)(Related document(s) <u>41</u> ) (Wong, Helen) Modified on 9/27/2014 to correct document association. (Diefenbach, Tracy). (Attachment 19 replaced on 10/3/2014) (Baldwin, Joella). (Attachment 20 replaced on 10/3/2014) (Baldwin, Joella). (Entered: 09/27/2014)
09/28/2014	<u>43</u>	Emergency MOTION to intervene filed by Noah K. Wood on behalf of Kyle Alexander, Dylan Symington. Suggestions in opposition/response due by 10/17/2014 unless otherwise directed by the court. (Attorney Noah K. Wood added to party Kyle Alexander(pty:intv), Attorney Noah K. Wood added to party Dylan Symington(pty:dft))(Wood, Noah) (Entered: 09/28/2014)
09/28/2014	<u>44</u>	SUGGESTIONS in support re <u>43</u> Emergency MOTION to intervene filed by Noah K. Wood on behalf of Intervenor Kyle Alexander, Defendant Dylan



		Symington. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10)(Related document(s) <u>43</u> ) (Wood, Noah) (Entered: 09/28/2014)
09/28/2014	<u>45</u>	MOTION for temporary restraining order <i>Extension</i> filed by Teresa N. Kosmidis on behalf of Federal Trade Commission. Suggestions in opposition/response due by 10/17/2014 unless otherwise directed by the court. (Kosmidis, Teresa) (Entered: 09/28/2014)
09/29/2014	<u>46</u>	Minute Entry. Proceedings held before District Judge Brian C. Wimes: SHOW CAUSE HEARING held on 9/29/2014; order to issue. To order a transcript of this hearing please contact Gayle Wambolt, 816-512-5641. (Baldwin, Joella) (Entered: 09/29/2014)
09/30/2014	<u>47</u>	IT IS ORDERED Plaintiffs Motion To Extend Temporary Restraining Order (Doc. #45) is GRANTED. The temporary restraining order is extended until October 3, 2014, at 9:00 A.M. unless otherwise ordered by the Court. Signed on 9/30/14 by District Judge Brian C. Wimes. (Baldwin, Joella) (Entered: 09/30/2014)
10/01/2014	<u>48</u>	Joint MOTION for release of funds <i>from Frozen Assets</i> filed by Kersten Holzhueter on behalf of Eric L. Johnson. Suggestions in opposition/response due by 10/20/2014 unless otherwise directed by the court. (Holzhueter, Kersten) (Entered: 10/01/2014)
10/01/2014	<u>49</u>	ORDER granting <u>48</u> motion for release of funds. Signed on 10/1/14 by District Judge Brian C. Wimes. (Baldwin, Joella) (Entered: 10/01/2014)
10/01/2014	<u>50</u>	NOTICE of appearance by Aristotle N. Rodopoulos on behalf of Kyle Alexander, Dylan Symington (Attorney Aristotle N. Rodopoulos added to party Kyle Alexander(pty:intv), Attorney Aristotle N. Rodopoulos added to party Dylan Symington(pty:intv))(Rodopoulos, Aristotle) (Entered: 10/01/2014)
10/01/2014	<u>51</u>	SUGGESTIONS in opposition re <u>43</u> Emergency MOTION to intervene filed by Helen Wong on behalf of Plaintiff Federal Trade Commission. Reply suggestions due by 10/20/2014 unless otherwise directed by the court (Related document(s) <u>43</u> ) (Wong, Helen) (Entered: 10/01/2014)
10/02/2014	<u>52</u>	REPLY SUGGESTIONS to motion re <u>43</u> Emergency MOTION to intervene filed by Noah K. Wood on behalf of Intervenor Parties Kyle Alexander, Dylan Symington. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Related document(s) <u>43</u> ) (Wood, Noah) (Entered: 10/02/2014)
10/02/2014	53	NOTICE OF HEARING – <b>This is the official notice for this hearing.</b> Telephone Conference set for 10/3/2014 at 10:30 a.m., before District Judge Brian C. Wimes. Parties have been provided call-in numbers via e-mail.(Baldwin, Joella) (Entered: 10/02/2014)
10/02/2014	<u>54</u>	STIPULATED INTERIM ORDER. Signed on 10/2/14 by District Judge Brian C. Wimes. (Baldwin, Joella) (Entered: 10/02/2014)
10/03/2014	55	Minute Entry. Proceedings held before District Judge Brian C. Wimes: TELEPHONE CONFERENCE held on 10/3/2014. Order to issue. To order a transcript of this hearing please contact Gayle Wambolt, 816-512-5641. (Baldwin, Joella) (Entered: 10/03/2014)

10/03/2014	<u>56</u>		STIPULATION for <i>Limited Relief from Asset Freeze</i> by Sonny Vleisides. (Foster, Michael) (Entered: 10/03/2014)
10/03/2014	<u>57</u>		STIPULATION for <i>Limited Relief of Asset Freeze</i> by Darla Drake. (Foster, Michael) (Entered: 10/03/2014)
10/03/2014	58		***Remark: Previously sealed exhibit attachments (19 & 20) to Doc. # 42 have been replaced with redacted versions and sealed access lifted at the request of counsel. (Baldwin, Joella) (Entered: 10/03/2014)
10/03/2014	<u>59</u>	11	IT IS ORDERED Kyle Alexander and Dylan Symingtons Emergency Motion to Intervene (Doc. #43) is DENIED. Signed on 10/3/14 by District Judge Brian C. Wimes. (Baldwin, Joella) (Entered: 10/03/2014)
10/03/2014	<u>60</u>		Emergency MOTION to lift stay <i>To Permit Compliance with an Order Issued by the United States District Court for the District of Kansas</i> filed by Noah K. Wood on behalf of Kyle Alexander, Dylan Symington. Suggestions in opposition/response due by 10/20/2014 unless otherwise directed by the court. (Wood, Noah) (Entered: 10/03/2014)
10/03/2014	<u>61</u>		SUGGESTIONS in support re <u>60</u> Emergency MOTION to lift stay <i>To Permit Compliance with an Order Issued by the United States District Court for the District of Kansas</i> filed by Noah K. Wood on behalf of Intervenor Parties Kyle Alexander, Dylan Symington. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Related document(s) <u>60</u> ) (Wood, Noah) (Entered: 10/03/2014)
10/03/2014	<u>62</u>	15	NOTICE OF APPEAL as to <u>59</u> Order on Motion to Intervene by Kyle Alexander, Dylan Symington. Filing fee \$ 505, receipt number 0866-4112818. (Attachments: # <u>1</u> Exhibit 1)(Wood, Noah) (Entered: 10/03/2014)
10/06/2014	<u>63</u>	21	TRANSMISSION of Notice of Appeal Supplement to US Court of Appeals, 8th Circuit via electronic mail. Related document <u>62</u> Notice of Appeal. (Crespo, Wil) (Entered: 10/06/2014)
10/06/2014	<u>64</u>	22	IT IS ORDERED Alexander and Symingtons Emergency Motion for Relief from Stay to Permit Compliance with an Order Issued by the United States District Court for the District of Kansas (Doc. #60) is GRANTED. Signed on 10/6/14 by District Judge Brian C. Wimes. (Baldwin, Joella) (Entered: 10/06/2014)
10/06/2014	65		***Remark: The Court acknowledges Doc. # 57 STIPULATION for Limited Relief of Asset Freeze by Darla Drake, and Doc. # 56 STIPULATION for Limited Relief from Asset Freeze by Sonny Vleisides. (Baldwin, Joella) (Entered: 10/06/2014)

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:14-CV-00815-BCW
	)	
BF LABS, INC., et al.,	)	
	)	
Defendants.	)	

**ORDER**

Kyle Alexander and Dylan Symington move to intervene in this action by right and by permission pursuant to Federal Rule of Civil Procedure 24 (Doc. #43). For the following reasons, the Court denies the motion.

**I. BACKGROUND**

Alexander and Symington filed a class action lawsuit against Defendant BF Labs (“BFL”) in March 2014 in the United States District Court for the District of Kansas (“Kansas lawsuit”). Their complaint challenges BFL’s business practices in connection with the marketing and sale of Bitcoin mining machines. The Kansas lawsuit is pending and is in the discovery phase.

Based on similar complaints from consumers, the FTC filed the instant lawsuit in September 2014 seeking a permanent injunction and other equitable relief based on violations of Section 5(a) of the Federal Trade Act. The FTC sought a temporary restraining order (“TRO”) that included an asset freeze, appointment of a receiver, and a stay preventing all persons (including non-parties) from continuing any suit against Defendants. The Court granted the TRO

and, subsequently, granted the parties' stipulated interim order that included several of the same provisions.

After the TRO was issued but before the Court granted the parties' stipulated interim order, Alexander and Symington filed the instant motion to intervene and request emergency review. The FTC filed an opposition, and Alexander and Symington filed a reply. The Court heard oral argument by telephone on October 3, 2014.

## II. ANALYSIS

### A. The Court denies intervention as of right.

Alexander and Symington initially seek intervention as of right. Under Federal Rule of Civil Procedure 24(a), a party is entitled to intervene as of right if: (1) it claims an interest relating to the subject of the action; (2) the disposition of the action may impair or impede its ability to protect its interest; and (3) its interest is not adequately represented by existing parties. Fed. R. Civ. P. 24(a)(2); Little Rock Sch. Dist. v. N. Little Rock Sch. Dist., 378 F.3d 774, 780 (8th Cir. 2004). The party seeking to intervene must establish all three elements. Id.

The Court begins by analyzing the third element. To determine whether representation is adequate, courts compare the "interests of the proposed intervenor with the interests of the current parties to the action." Id. (internal quotation omitted). The party seeking to intervene generally need only make a minimal showing that the representation "may be" inadequate, but the "burden is greater if the named party is a government entity that represents interests common to the public." Id. In such cases, courts presume the government entity adequately represents the public, and the party seeking to intervene must "make a strong showing of inadequate representation . . . ." Id.

The Court finds that Alexander and Symington currently fail to overcome this presumption. They argue that the “remedies sought by the FTC conflict with, frustrate, and deny remedies available to consumers . . . .” Doc. #44 at 11. Alexander and Symington also contend the FTC does not adequately represent them because it lacks an attorney-client privilege with consumers and “has no fiduciary duty to act in any particular consumer’s best interest.” Id.

Notwithstanding these arguments, the Court concludes that the FTC will adequately protect their interests. The FTC’s actions to date have effectively preserved Defendants’ assets, thereby protecting the interests of all consumers.<sup>1</sup> See FTC v. First Capital Consumer Membership, 206 F.R.D. 358, 365 (W.D.N.Y. 2001) (finding adequate representation); FTC v. Med. Resorts Int’l, Inc., 199 F.R.D. 601, 607–08 (N.D. Ill. 2001) (same). The Court also considered Alexander and Symington’s additional arguments on this element—which are generally disagreements with the FTC’s litigation strategy—and finds them unpersuasive. See Little Rock, 378 at 781 (noting that different procedural choices do not make an interest distinct). Because the Court concludes that Alexander and Symington have not demonstrated the third element, the Court denies intervention as of right.

#### **B. The Court denies permissive intervention.**

Alexander and Symington also seek permissive intervention under Federal Rule of Civil Procedure 24(b)(1)(B). This rule allows the court to permit a party to intervene who “has a claim or defense that shares with the main action a common question of law or fact.” The decision to grant or deny permissive intervention is “wholly discretionary,” and the principal consideration “is whether the proposed intervention would unduly delay or prejudice the adjudication of the

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<sup>1</sup> Alexander and Symington also ignore that the stipulated interim order, which the Court issued on October 2, 2014, directs the Temporary Receiver to “[c]onserve, hold, and manage all Receivership assets, and perform all acts necessary and advisable to preserve the value of those assets, in order to prevent any irreparable loss, damage, or injury to consumers or to creditors of the Receivership Defendants . . . .” Doc. #54 at 13.

parties' rights.” South Dakota ex rel. Barnett v. U.S. Dep’t of Interior, 317 F.3d 783, 787 (8th Cir. 2003).

Exercising its discretion, the Court denies permissive intervention at this time. This case is in the early stages and there is a lot of activity to be done within the next few months. The Court is concerned that permissive intervention at this point would take a significant amount of additional time with minimal benefit to the proceedings. See, e.g., LaSalle Group Inc. v. Veterans Enter. Tech. Servs., No. 11-CV-3517-DGK, 2012 WL 1113320, at \*5 (W.D. Mo. Apr. 2, 2012) (expressing concern that intervention will take additional time and “make the proceeding a Donnybrook Fair”). The Court additionally finds Alexander and Symington’s concerns too remote at this stage of the proceedings to justify intervention.

The Court denies the instant motion without prejudice. As the case progresses and issues become more concrete, Alexander and Symington can seek leave to intervene (as of right or permission) to the extent necessary and proper. Accordingly, it is hereby

ORDERED Kyle Alexander and Dylan Symington’s Emergency Motion to Intervene (Doc. #43) is DENIED.

IT IS SO ORDERED.

DATED: October 3, 2014

/s/ Brian C. Wimes  
JUDGE BRIAN C. WIMES  
UNITED STATES DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:14-cv-00815-BCW
	)	
BF LABS INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	

**NOTICE OF APPEAL TO THE UNITED STATES  
COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

Notice is hereby given that Kyle Alexander and Dylan Symington, on behalf of themselves and all those similarly situated, as the class representatives in the action *Alexander et al. v. BF Labs, Inc.*, hereby appeal to the United States Court of Appeals for the Eighth Circuit from an order (attached as **Exhibit 1**) denying their Motion to Intervene under Rule 24(a) entered in this action on the 3<sup>rd</sup> day of October, 2014. *See South Dakota ex rel Barnett v. U.S. Dept. of Interior*, 317 F.3d 783, 785 (8<sup>th</sup> Cir. 2003) (“The denial of a motion to intervene of right is immediately appealable as a final judgment.”).

Date: October 3, 2014

Respectfully submitted,

WOOD LAW FIRM, LLC

By /s/ Noah K. Wood

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F: (816) 337-4243

*Attorneys Alexander and Symington*

## CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2014, I electronically filed the foregoing document using CM/ECF which served a copy of the foregoing document on the following counsel of record:

<p>Helen Wong, DC Bar # 997800 Teresa N. Kosmidis, NY Bar# 4533824 Leah Frazier, DC Bar# 492540 Federal Trade Commission 600 Pennsylvania Ave., N.W. Mail Stop CC-10232 Washington, D.C. 20580 202-326-3779 (Wong) 202-326-3216 (Kosmidis) 202-326-2187 (Frazier) Facsimile: 202-326-3768 <a href="mailto:hwong@ftc.gov">hwong@ftc.gov</a> <a href="mailto:tkosmidis@ftc.gov">tkosmidis@ftc.gov</a> <a href="mailto:lfrazier@ftc.gov">lfrazier@ftc.gov</a></p> <p>Charles M. Thomas, MO Bar #28522 Assistant United States Attorney Charles Evans Whittaker Courthouse 400 East Ninth Street, Room 5510 Kansas City, MO 64106 Telephone: (816) 426-3130 Facsimile: (816) 426-3165 E-mail: <a href="mailto:charles.thomas@usdoj.gov">charles.thomas@usdoj.gov</a></p> <p><i>Attorneys for Federal Trade Commission</i></p> <p>Bryant T. Lamer Kersten L. Holzhueter Andrea M. Chase Katie Jo Wheeler Spencer Fane Britt &amp; Browne LLP 1000 Walnut Street, Suite 1400 Kansas City MO 64106 816-474-8100 <a href="mailto:blamer@spencerfane.com">blamer@spencerfane.com</a> <a href="mailto:kholzheuter@spencerfane.com">kholzheuter@spencerfane.com</a> <a href="mailto:achase@spencerfane.com">achase@spencerfane.com</a> <a href="mailto:kwheeler@spencerfane.com">kwheeler@spencerfane.com</a></p> <p><i>Attorneys for Receiver Eric L. Johnson</i></p>	<p>James M. Humphrey, MO # 50200 Michael S. Foster, MO # 61205 Miriam E. Bailey, MO # 60366 POLSINELLI PC 900 W. 48th Place, Suite 900 Kansas City, Missouri 64112-1895 Telephone: (816) 753-1000 Facsimile: (816) 753-1536 <a href="mailto:jhumphrey@polsinelli.com">jhumphrey@polsinelli.com</a> <a href="mailto:mfoster@polsinelli.com">mfoster@polsinelli.com</a> <a href="mailto:mbailey@polsinelli.com">mbailey@polsinelli.com</a></p> <p>Braden M. Perry, MO # 53865 KENNYHERTZ PERRY LLC 420 Nichols Road, Suite 207 Kansas City, MO 64112 Direct: 816-527-9445 Mobile: 913-488-4882 Fax: 855-844-2914 <a href="mailto:braden@kennyhertzperry.com">braden@kennyhertzperry.com</a></p> <p><i>Attorneys for Defendant BF Labs Inc., Darla Drake, Nasser Ghoseiri, and Sonny Vleisides</i></p>
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**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:14-CV-00815-BCW
	)	
BF LABS, INC., et al.,	)	
	)	
Defendants.	)	

**ORDER**

Kyle Alexander and Dylan Symington move to intervene in this action by right and by permission pursuant to Federal Rule of Civil Procedure 24 (Doc. #43). For the following reasons, the Court denies the motion.

**I. BACKGROUND**

Alexander and Symington filed a class action lawsuit against Defendant BF Labs (“BFL”) in March 2014 in the United States District Court for the District of Kansas (“Kansas lawsuit”). Their complaint challenges BFL’s business practices in connection with the marketing and sale of Bitcoin mining machines. The Kansas lawsuit is pending and is in the discovery phase.

Based on similar complaints from consumers, the FTC filed the instant lawsuit in September 2014 seeking a permanent injunction and other equitable relief based on violations of Section 5(a) of the Federal Trade Act. The FTC sought a temporary restraining order (“TRO”) that included an asset freeze, appointment of a receiver, and a stay preventing all persons (including non-parties) from continuing any suit against Defendants. The Court granted the TRO

and, subsequently, granted the parties' stipulated interim order that included several of the same provisions.

After the TRO was issued but before the Court granted the parties' stipulated interim order, Alexander and Symington filed the instant motion to intervene and request emergency review. The FTC filed an opposition, and Alexander and Symington filed a reply. The Court heard oral argument by telephone on October 3, 2014.

## II. ANALYSIS

### A. The Court denies intervention as of right.

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The Court finds that Alexander and Symington currently fail to overcome this presumption. They argue that the “remedies sought by the FTC conflict with, frustrate, and deny remedies available to consumers . . . .” Doc. #44 at 11. Alexander and Symington also contend the FTC does not adequately represent them because it lacks an attorney-client privilege with consumers and “has no fiduciary duty to act in any particular consumer’s best interest.” Id.

Notwithstanding these arguments, the Court concludes that the FTC will adequately protect their interests. The FTC’s actions to date have effectively preserved Defendants’ assets, thereby protecting the interests of all consumers.<sup>1</sup> See FTC v. First Capital Consumer Membership, 206 F.R.D. 358, 365 (W.D.N.Y. 2001) (finding adequate representation); FTC v. Med. Resorts Int’l, Inc., 199 F.R.D. 601, 607–08 (N.D. Ill. 2001) (same). The Court also considered Alexander and Symington’s additional arguments on this element—which are generally disagreements with the FTC’s litigation strategy—and finds them unpersuasive. See Little Rock, 378 at 781 (noting that different procedural choices do not make an interest distinct). Because the Court concludes that Alexander and Symington have not demonstrated the third element, the Court denies intervention as of right.

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parties' rights." South Dakota ex rel. Barnett v. U.S. Dep't of Interior, 317 F.3d 783, 787 (8th Cir. 2003).

Exercising its discretion, the Court denies permissive intervention at this time. This case is in the early stages and there is a lot of activity to be done within the next few months. The Court is concerned that permissive intervention at this point would take a significant amount of additional time with minimal benefit to the proceedings. See, e.g., LaSalle Group Inc. v. Veterans Enter. Tech. Servs., No. 11-CV-3517-DGK, 2012 WL 1113320, at \*5 (W.D. Mo. Apr. 2, 2012) (expressing concern that intervention will take additional time and "make the proceeding a Donnybrook Fair"). The Court additionally finds Alexander and Symington's concerns too remote at this stage of the proceedings to justify intervention.

The Court denies the instant motion without prejudice. As the case progresses and issues become more concrete, Alexander and Symington can seek leave to intervene (as of right or permission) to the extent necessary and proper. Accordingly, it is hereby

ORDERED Kyle Alexander and Dylan Symington's Emergency Motion to Intervene (Doc. #43) is DENIED.

IT IS SO ORDERED.

DATED: October 3, 2014

/s/ Brian C. Wimes  
JUDGE BRIAN C. WIMES  
UNITED STATES DISTRICT COURT

U. S. COURT OF APPEALS - EIGHTH CIRCUIT  
NOTICE OF APPEAL SUPPLEMENT

**MISSOURI WESTERN DISTRICT - KANSAS CITY**

Please note any additions or deletions to the style of the case from the style listed on the docket sheet (or attach an amended docket sheet with the final style of the case).

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Case Caption: Federal Trade Commission v. BF  
Labs, Inc. et al

Case No. 14-cv-00815-BCW

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Appellant: **Kyle Alexander & Dylan Symington**

Appellee: **Federal Trade Commission**

Appellant's Attorney(s):

Appellee's Attorney(s):

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Court Reporter(s):

Please return files and documents to:

Gayle Wambolt, Denise Halasey

**United States District Court**  
**400 East 9<sup>th</sup> Street, Room 1510**  
**Kansas City, MO 64106**

Contact Person for Appeal:  
**Willie Crespo 816-512-5068**

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Length of Trial: 0	Fee: \$505	IFP: No	Pending IFP Motion: No
Counsel: Retained	Pending Motions? No	Local Interest? <b>No</b>	Simultaneous Release? <b>No</b>

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**Special Comments:** This is an interlocutory appeal.

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

FEDERAL TRADE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:14-CV-00815-BCW
	)	
BF LABS, INC., et al.,	)	
	)	
Defendants.	)	

**ORDER**

Kyle Alexander and Dylan Symington move for relief from the stay provisions of the Court's October 2, 2014 order so that they can comply with an order issued by the United States District Court for the District of Kansas in Alexander v. BF Labs, Inc., No. 14-CV-2159-KHV-JPO (Doc. #60). This Court's October 2, 2014 order states that:

Except by leave of this Court . . . Defendants and all other persons and entities be and hereby are stayed from taking any action to establish or enforce any claim, right, or interest for, against, on behalf of, in, or in the name of, the Receivership Defendant . . . including, but not limited to . . . [c]ommencing, prosecuting, continuing, entering, or enforcing any suit or proceeding . . . .

Doc. #54 at 26. The Court included this provision based in part on the concerns that additional litigation would significantly interfere with the Receiver's ability to perform its duties, would divert estate resources to litigation, and would interfere with this Court's ability to adjudicate the complex lawsuit currently pending before it. The stay is not intended to be endless but is merely a temporary stay to give the Receiver and the parties an opportunity to gather necessary information and present it to this Court.

Despite these concerns, the Court finds that Alexander and Symington's instant motion should be granted. To the extent this motion is necessary, the Court concludes the limited relief

they seek (e.g., responding to the order in the District of Kansas lawsuit) is necessary, will not result in substantial injury to the parties, and will not significantly upset the Court's goals in entering the stay. Accordingly, it is hereby

ORDERED Alexander and Symington's Emergency Motion for Relief from Stay to Permit Compliance with an Order Issued by the United States District Court for the District of Kansas (Doc. #60) is GRANTED.

IT IS SO ORDERED.

DATED: October 6, 2014

/s/ Brian C. Wimes  
JUDGE BRIAN C. WIMES  
UNITED STATES DISTRICT COURT